



**BILLING CODE: 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 21**

**[Docket No. FWS-R9-MB-2011-0100; FF09M29000-145-FXMB12320900000]**

**RIN 1018-AX92**

**Migratory Bird Permits; Removal of Regulations Concerning Certain Depredation Orders**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

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**SUMMARY:** We are removing two regulations that set forth certain depredation orders for migratory birds. There have been no requests for authorization of a depredation order under one regulation we are removing, and no reports of activities undertaken under the other in the last 10 years. Control of depredating birds may be undertaken under depredation permits in accordance with the regulations already set forth.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** George Allen, at 703-358-1825.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 4, 2013, we published a proposed rule (78 FR 65953) to remove 50 CFR 21.42, 21.45, and 21.46. These regulations concern depredating migratory birds.

Specifically, 50 CFR 21.42 governs control of depredating migratory game birds in the United States; under this section of the regulations, the Director of the U.S. Fish and Wildlife Service is authorized to issue, by publication in the **Federal Register**, a depredation order to permit the taking of migratory game birds under certain conditions if the Director receives evidence clearly showing that the migratory game birds have accumulated in such numbers in a particular area as to cause or about to cause serious damage to agricultural, horticultural, and fish cultural interests.

Under 50 CFR 21.45, landowners, sharecroppers, tenants, or their employees or agents actually engaged in the production of rice in Louisiana, may, without a permit and in accordance with certain conditions, take purple gallinules (*Ionornis martinica*) when found committing or about to commit serious depredations to growing rice crops on the premises owned or occupied by those persons.

Under 50 CFR 21.46, landowners, sharecroppers, tenants, or their employees or agents actually engaged in the production of nut crops in Washington and Oregon may, without a permit and in accordance with certain conditions, take scrub jays (*Aphelocoma coerulescens*) and Steller's jays (*Cyanocitta stelleri*) when found committing or about to

commit serious depredations to nut crops on the premises owned or occupied by such persons.

### **This Rule**

In response to our November 4, 2013, proposed rule (78 FR 65953), we received no comments on our proposal to remove 50 CFR 21.42 or 21.45, but we did receive comments about our proposal to remove 50 CFR 21.46. In this final rule, we are removing only 50 CFR 21.42 and 21.45, as well as references to those two sections that appear in 50 CFR 21.41 and 21.53. Removal of these depredation orders does not affect any other depredation order in 50 CFR part 21. We will address our proposal to remove 50 CFR 21.46 in a separate rule, in which we will respond to the comments we received concerning the proposal to remove that section of our regulations.

The regulations at 50 CFR 21.42 and 21.45 were put in place in 1974, to help commercial agricultural interests (39 FR 1157, January 4, 1974). 50 CFR 21.45 requires reporting and recordkeeping on activities taken in accordance with the regulations. We have received no applications for declaration of a depredation order under § 21.42 in the last 15 years, and there have been no reports of activities conducted under § 21.45 in at least 10 years.

Upon the effective date of this rule (see **DATES**, above), control of depredating birds may still be undertaken under depredation permits, in accordance with 50 CFR 21.41.

## **Required Determinations**

### *Regulatory Planning and Review (Executive Orders 12866 and 13563).*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory

flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. There are no costs associated with this regulations change. The Federal Government will see a small benefit because it will no longer incur the annual cost of publishing the three sections of the regulations in the Code of Federal Regulations (CFR).

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act. This action will not have a significant economic impact on any small entity, so a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)). It will not have a significant impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of \$100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, Tribal, or local government agencies, or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following.

- a. This rule will not “significantly or uniquely” affect small governments. A small government agency plan is not required.
- b. This rule will not produce a Federal mandate of \$100 million or greater in any year. It is not a “significant regulatory action.”

### *Takings*

This rule does not contain a provision for taking of private property. In accordance with Executive Order 12630, a takings implication assessment is not required.

### *Federalism*

This rule does not have sufficient Federalism effects to warrant preparation of a federalism summary impact statement under Executive Order 13132. It will not interfere with the States’ abilities to manage themselves or their funds. We do not expect significant economic impacts to result from the removal of the depredation orders.

### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

### *Paperwork Reduction Act of 1995*

There is no information collection requirement associated with this regulations change. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### *National Environmental Policy Act*

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432-437(f) and 43 CFR 46.210. The regulations change will remove unused regulations, and is administrative in nature. The action is categorically excluded from further NEPA consideration by 43 CFR 46.210(i).

*Socioeconomic.* The regulations change will have no socioeconomic impacts.

*Migratory bird populations.* The regulations change will not affect native migratory bird populations.

*Endangered and threatened species.* The regulation change will not affect endangered or threatened species or habitats important to them.

### *Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that there are no potential effects on Federally recognized Indian Tribes from the regulations

change. The regulations change will not interfere with Tribes' abilities to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

*Energy Supply, Distribution, or Use (Executive Order 13211)*

This rule will affect only two depredation orders for migratory birds, and will not affect energy supplies, distribution, or use. This is not a significant energy action, and no Statement of Energy Effects is required.

*Compliance with Endangered Species Act Requirements*

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). The regulations change will not affect listed species.

**List of Subjects in 50 CFR Part 21**

Exports, Hunting, Imports, Reporting and recordkeeping requirements,  
Transportation, Wildlife.



## **Regulation Promulgation**

For the reasons described in the preamble, we amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### **PART 21—MIGRATORY BIRD PERMITS**

1. The authority for part 21 continues to read as follows:

**Authority:** 16 U.S.C. 703-712.

2. Amend § 21.41 by revising paragraph (a) to read as follows:

#### **§ 21.41 Depredation permits.**

(a) *Permit requirement.* Except as provided in §§ 21.43, 21.44, and 21.46, a depredation permit is required before any person may take, possess, or transport migratory birds for depredation control purposes. No permit is required merely to scare or herd depredating migratory birds other than endangered or threatened species or bald or golden eagles.

\* \* \* \* \*

#### **§ 21.42 [Removed and reserved]**

3. Remove and reserve § 21.42.

#### **§ 21.45 [Removed and reserved]**

4. Remove and reserve § 21.45.

**§ 21.53 [Amended]**

5. Amend § 21.53 by removing the fourth sentence of paragraph (c)(2).

Dated: February 2, 2015.

**Michael J. Bean,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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